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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

SUN JEON,

Plaintiff and Respondent,

v.

FARMER BROS. CO.,

Defendant and Appellant.

B285906

(Los Angeles County  
Super. Ct. No. BC597085)

APPEAL from an order of the Superior Court of  
Los Angeles County. Michael J. Raphael, Judge. Affirmed.

Venable, Eric J. Bakewell and Siobhan C. Amin for  
Defendant and Appellant.

Mashian Law Group and Bryan Mashian for Plaintiff and  
Respondent.

Defendant and appellant Farmer Bros. Co. (Farmer) appeals from an order granting a motion by plaintiff and respondent Sun Jeon (Jeon) to enforce a settlement agreement pursuant to Code of Civil Procedure section 664.6.<sup>1</sup> We affirm the trial court's order.

## **FACTUAL BACKGROUND**

### **The purchase transaction and underlying lawsuit**

In February 2014, Jeon entered into an agreement to purchase from Farmer two adjoining parcels of property in Los Angeles. During the contingency period for the transaction, Farmer discovered subsurface chlorinated solvent contamination on one of the two properties, and the parties amended the purchase agreement to allow escrow to close on the uncontaminated property (the First Property) while delaying the closing date on the contaminated property (the Second Property) to a date after Farmer had remediated the contamination.

A dispute subsequently arose between the parties as to whether the remediation had been completed. In October 2015, Jeon sued Farmer for specific performance, breach of contract, breach of the covenant of good faith and fair dealing, and declaratory relief.

### **Settlement agreement**

On June 6, 2016, the parties entered into a settlement agreement that relieved Farmer of any obligation to further remediate the Second Property; allowed Jeon to conduct specified environmental testing, as described in a scope of work attached as an exhibit to the settlement agreement; and granted Jeon an option to either purchase the property at a \$400,000 discount, or not purchase the property, have her \$60,000 escrow deposit returned, and have Farmer reimburse her for up to \$25,000 of the

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure, unless stated otherwise.

testing costs. The settlement agreement set an August 22, 2016 deadline for Jeon to exercise the purchase option.

Paragraph 2 of the settlement agreement covers environmental testing on the Second Property and provides in relevant part:

“Seller will immediately and continuously grant Andy Schmidt/Astech Environmental Services, Inc. (‘Astech’)[<sup>2</sup>] reasonable access to the Second Property as and when needed to conduct and complete the testing described in Exhibit A attached hereto (the ‘Astech Testing’) . . . . The Astech Testing shall be conducted and completed on or before sixty (60) calendar days after the Effective Date [June 6, 2016] (the ‘Testing Expiration Date’) [August 6, 2016][<sup>3</sup>] and Buyer and Astech shall diligently and in good faith cooperate with Seller and endeavor to complete the Astech Testing as soon as reasonably possible; provided, however, the Testing Expiration Date shall be reasonably extended if and to the extent the completion of the Astech Testing is delayed due to Seller’s breach of or default under this Agreement, such as failure to provide access to the Second Property . . . .”

Exhibit A to the settlement agreement is a January 8, 2016 proposal by Astech to conduct an eight-part scope of work (Scope of Work #1) to determine the extent of chlorinated solvent contamination beneath an existing warehouse building. Part 1 of Scope of Work #1 states:

“Advance one (1) continuous core boring within the interior portion of the warehouse building near

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<sup>2</sup> Astech was Jeon’s environmental consultant.

<sup>3</sup> The effective date of the settlement agreement is June 6, 2016. 60 days thereafter is August 6, 2016.

the location of prior sampling point SV4/B6<sup>[4]</sup> to a maximum depth of 40-feet below ground surface (bgs), groundwater, or drilling refusal. Complete boring with nested soil vapor probes at depths of 15, 25, [and] 50-feet bgs or at lithologic intervals determined to be low-vacuum/high flow. Companion soil samples will be collected in accordance with EPA Method 5035 and analyzed using EPA Method 8260B. Submit one (1) soil sample for analysis of Cal-EPA DTSC Vapor Intrusion Package (ASTM D2937, API RP40, ASTM 2216, ASTM D422, & TOC/foc).”<sup>[5]</sup>

The settlement agreement provides that the trial court would retain jurisdiction to enforce its provisions.

#### **June 2016 environmental testing**

On June 21, 2016, Astech commenced Scope of Work #1; however, the testing could not be completed because the drill rig Astech used (a 25-ton CPT rig) could not reach the targeted depth of 40 feet below grade surface. Astech advised Farmer’s environmental consultant of the need to return to the site to complete the boring using a different drill rig.

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<sup>4</sup> SV4/B6 was a sampling point in a prior subsurface environmental investigation by Farmer indicating the presence of volatile organic compounds, including chlorinated solvents, in soil vapor beneath the warehouse building.

<sup>5</sup> The other seven parts of the scope of work included installing soil vapor probes at various depths below ground surface (parts 2-4), installing sub-slab vapor pins (part 6), collecting and analyzing vapor samples (parts 5 and 7), preparing a technical report including a discussion of the findings and recommendations (part 8), and an optional human risk assessment.

Test results from samples Astech was able to collect on June 21, 2016, revealed higher levels of contamination in the soil than had been previously reported by Farmer's environmental consultant. The results further showed that contaminant concentrations increased with depth.

On July 22, 2016, Astech notified Farmer that it would be returning to the site with a different drill to complete Scope of Work #1. Farmer refused to grant Astech access to the property to do so, and insisted that any further drilling be located outside of the warehouse building. Farmer's stated reason for denying access was that further drilling could cause contaminants to migrate deeper into the subsoil, despite assurances from Astech that precautions would be taken to prevent this from occurring.

#### **Amendment to settlement agreement**

In an effort to resolve the parties' dispute over further environmental testing, Astech, at Jeon's direction, presented two additional drilling proposals to Farmer. Farmer rejected both these proposals. Jeon's counsel also communicated with Farmer by telephone and by email in July of 2016 about the need for additional time to complete the environmental testing.

On September 1, 2016, Jeon sent to Farmer an August 30, 2016 Astech proposal that addressed the concerns expressed by Farmer and its environmental consultant. On October 31, 2016, the parties entered into an amendment to the settlement agreement that allowed Jeon to perform additional testing as described in the August 30, 2016 Astech proposal (Scope of Work #2), which was attached as an exhibit to the amendment. Scope of Work #2 included drilling three exterior borings to a maximum depth of 130 feet below ground surface, three borings to a depth of 80 feet at locations mutually agreed upon by Farmer and Jeon, two borings along the western property boundary, installation of soil vapor probes, and testing at various boring locations. Scope of

Work #2 stated that the additional borings were to be advanced using a 25-ton CPT rig. Farmer continued to refuse to allow further drilling inside the warehouse.

The amendment to the settlement agreement states in relevant part:

“[T]he Parties, and each of them, agree to modify the Agreement as follows and in no other manner:

“1. The ‘Astech Testing’ as defined in the Agreement shall additionally include the testing described in Exhibit 1 attached hereto [Scope of Work #2], which shall be deemed part of the Astech Testing for all purposes. . . .

“2. With respect to the testing set forth in Exhibit 1 hereto, the ‘Testing Expiration Date’ as defined in the Agreement is hereby extended to December 30, 2016.”

The amendment also extended the deadline for Jeon to exercise her option to purchase the Second Property to January 13, 2017, and extended the closing date to February 13, 2017.

**November 2016 environmental testing and Farmer’s cancellation of the purchase transaction**

On November 18, 2016, Astech used a CPT drill rig to perform the additional sampling specified in Scope of Work #2. None of the borings reached a depth of more than 43 feet. As a result, the testing contemplated in Scope of Work #2 could not be completed.

At Jeon’s direction, Astech prepared another testing proposal, dated November 22, 2016, for further sampling and testing. Jeon’s counsel submitted the November 22, 2016 proposal to Farmer on December 6, 2016, but Farmer refused to allow Jeon

to perform that work. On January 19, 2017, Farmer sent Jeon an email cancelling the purchase agreement and issued instructions to cancel the escrow.

Jeon disputed Farmer's cancellation, and on March 16, 2017, her attorney sent Farmer a February 28, 2017 Astech proposal to conduct a non-intrusive soil vapor survey at the Second Property. The proposed approach was intended to address Farmer's concerns that advancing further borings in areas where contamination had been detected would cause the contaminants to migrate deeper into the subsoil. In response, Farmer's counsel proposed a further amendment to the settlement agreement that would allow the additional testing, but demanded a \$1 million increase in the purchase price.

### **PROCEDURAL HISTORY**

Jeon filed a motion to enforce the settlement agreement on July 18, 2017, seeking an order requiring Farmer to grant Astech access to the Second Property to complete the testing specified in Scope of Work #1 and Scope of Work #2. Jeon's motion was supported by documentary evidence, Jeon's own declaration, and declarations by her attorney and by Andy Schmitt of Astech.

In opposing the motion, Farmer argued that the testing specified in paragraph 1 of Scope of Work #1 was completed when any one of the following events occurred: (1) the drill reached a depth of 40 feet below grade surface; (2) the drill reached groundwater; or (3) Astech experienced "drilling refusal." Because Astech had encountered drilling refusal, Farmer claimed that the testing was completed, even though the targeted depth of 40 feet below grade surface had not been reached.

In reply to Farmer's opposition, Jeon argued that the settlement agreement did not limit Astech to using any particular type of drill; "drilling refusal" was a technical term that did not mean a refusal encountered with the first drill used on the site;

Farmer had refused to allow Astech to return to the property with a different drill to complete the testing; and Farmer's refusal had extended the time for Astech to complete the testing. Jeon's reply was supported by a supplemental declaration by Schmitt.

Farmer filed objections to Jeon's reply and the supplemental Schmitt declaration, and a sur-reply supported by declarations by Farmer's counsel and its environmental consultant. Farmer also sought to have its attorney and its environmental consultant testify at the hearing on Jeon's motion to enforce the settlement agreement.

At the August 9, 2017 hearing on the motion, the trial court heard argument by the parties but did not allow testimony by Farmer's counsel or environmental consultant. At the conclusion of the hearing, the court took the matter under submission.

On August 18, 2017, the trial court issued a written order granting the motion to enforce the settlement agreement. The court found that the amendment had modified the settlement agreement in relevant part as follows: (1) expanded the Astech Testing to "additionally include" the testing described in Scope of Work #2; (2) extended the testing expiration date to December 30, 2016; and (3) extended the deadline for Jeon to exercise her purchase option to January 13, 2017.

The trial court further found that the amendment allowed Astech to advance a single boring to one of three ends: 130 feet below grade surface, groundwater, or drill refusal, and that it was undisputed that Astech encountered drill refusal. The trial court ruled, however, that the settlement agreement as amended did not restrict Astech to one attempt or to use of a particular type of drill, but required Farmer to "immediately and continuously" grant Astech "reasonable access" to the property "as and when needed to complete" the testing. This temporal limit, the trial court concluded, was the only limitation on the number of times



Astech could attempt to advance the boring. The court found that on November 22, 2016, Farmer refused Jeon's request to perform the additional test, in violation of Farmer's obligation to do so before the testing deadline of December 30, 2016 had elapsed. The trial court granted Jeon 38 days (calculated as the number of days between Farmer's refusal and December 30, 2016) to complete the testing. The court overruled the parties' evidentiary objections and stated that it had not considered Farmer's post-reply filings.

Farmer filed a motion for reconsideration of the August 18, 2017 order granting Jeon's motion to enforce the settlement agreement. The trial court denied that motion on October 19, 2017. This appeal followed.

### **CONTENTIONS ON APPEAL**

Farmer raises the following contentions on appeal:

1. The trial court incorrectly interpreted the settlement agreement to extend the deadline for completing Scope of Work #1 to December 30, 2016.
2. The trial court incorrectly based its extension of the testing deadline for Scope of Work #1 on a purported breach by Farmer that occurred prior to the August 5, 2016 testing expiration date.
3. The trial court improperly extended the deadline for Jeon's exercise of the purchase option.
4. The trial court erred by allowing Jeon to introduce new arguments and evidence in her reply brief and denying Farmer the opportunity to respond.

### **DISCUSSION**

#### **I. Applicable law and standard of review**

Code of Civil Procedure section 664.6 states: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for

settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.” A trial court’s factual findings on a motion pursuant to section 664.6 are reviewed under the substantial evidence standard. (*Kohn v. Jaymar-Ruby, Inc.* (1994) 23 Cal.App.4th 1530, 1533.)

Interpretation of the settlement agreement has its own standard of review. If the trial court interpreted the agreement without resorting to extrinsic evidence, or if the relevant extrinsic evidence is not in conflict, our review is de novo. If the trial court considered conflicting extrinsic evidence to aid in its interpretation, we will uphold a reasonable construction of the agreement if that construction is supported by substantial evidence. (*Argonaut Ins. Co. v. Transp. Indem. Co.* (1972) 6 Cal.3d 496, 502.) Since there is no indication in the record that the trial court relied on extrinsic evidence in interpreting the parties’ settlement agreement, we will review de novo the terms of the settlement agreement as amended by the parties. (*Ibid.*)

## **II. Extension of testing deadline**

Farmer contends the trial court erred by interpreting the amendment to extend the August 6, 2016 deadline for completing Scope of Work #1 to December 30, 2016. That interpretation, Farmer argues, contradicts the plain language of the amendment, which limits the December 30, 2016 extension to Scope of Work #2.

We agree that the amendment to the settlement agreement did not extend the deadline for completing Scope of Work #1 to December 30, 2016. Paragraph two of the amendment states that the December 30, 2016 extension applies only to Scope of Work #2: “With respect to the testing set forth in Exhibit 1 hereto [i.e.,

Scope of Work #2], the ‘Testing Expiration Date’ as defined in the Agreement is hereby extended to December 30, 2016.”

The trial court’s extension of the testing expiration date for Scope of Work #1 did not, however, contravene the terms of the settlement agreement as amended by the parties. The settlement agreement expressly provides for a reasonable extension of the testing deadline for Scope of Work #1 “to the extent the completion . . . is delayed due to [Farmer’s] . . . failure to provide access” to the property. The amendment states that the parties agreed to modify the settlement agreement only as specified “and in no other manner.” The amendment did not modify the settlement agreement provision extending the deadline for completing Scope of Work #1 in the event Farmer failed to provide access to the property. That provision accordingly remained enforceable by the trial court.

The plain language of the amendment contradicts Farmer’s claim that the amendment modified the settlement agreement to allow Jeon to undertake the testing set forth in Scope of Work #2 in lieu of Scope of Work #1. The amendment states that “[t]he ‘Astech Testing’ as defined in the [settlement] Agreement shall *additionally* include the testing described in” Scope of Work #2 (italics added) and that the parties had agreed to modify the settlement agreement as specified “and in no other manner.” The amendment did not supersede the settlement agreement provisions pertaining to Scope of Work #1.

Extension of the testing deadline for Scope of Work #1 does not, as Farmer argues, conflict with the “time is of the essence” provision of the settlement agreement, which states:

“TIME IS OF THE ESSENCE. Except as otherwise provided in this Agreement, in order to carry out the terms and conditions herein, the Parties agree to execute promptly upon reasonable request any and

all documents and instruments necessary to effectuate the terms of this Agreement.”

That provision expressly excepts reasonable extension of the testing deadline that is “otherwise provided” in the settlement agreement.

We reject Farmer’s argument that the settlement agreement is unenforceable because there was no meeting of the minds regarding extension of the testing period for Scope of Work #1. The plain language of the settlement agreement provides for a reasonable extension of the testing expiration date for Scope of Work #1 if Farmer’s failure to provide access to the property delayed completion of the testing.

### **III. Farmer’s refusal to grant Jeon access**

There is substantial evidence in the record that Farmer refused to allow Astech access to the property to complete Scope of Work #1.<sup>6</sup> The evidence shows that Astech attempted to drill the boring specified in part 1 of Scope of Work #1, that Astech was unable to reach the targeted depth of 40 feet below grade surface with the drill it had used, that Astech asked to return to the property to complete the work with a different drill, and that Farmer refused to allow further drilling in that location.

Whether such refusal constituted a breach of Farmer’s contractual obligations under the settlement agreement is not relevant to our review. “[A] party moving for the entry of judgment pursuant to a settlement under Code of Civil Procedure section 664.6 need not establish a breach of contract to support

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<sup>6</sup> In its opening brief on appeal, Farmer challenges only the trial court’s findings and rulings with respect to Scope of Work #1. Farmer accordingly has forfeited any challenge to the trial court’s August 18, 2017 enforcement order as it applies to Scope of Work #2. (*Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 41.)

relief under the statute.” (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1185.)

Farmer’s claim that it did not refuse Jeon access because she never asked to complete Scope of Work #1 on or before the August 6, 2016 testing expiration date is not supported by the evidence. Email exchanges between the parties in July 2016 reflect their discussions concerning the need for further testing and extension of the testing deadline. Schmitt submitted multiple declarations stating that Astech informed Farmer’s environmental consultants of the need to return to the property with a different drill to complete Scope of Work #1, and that Farmer refused to allow Astech to do so. Schmitt specifically states in a declaration submitted in opposition to Farmer’s motion for reconsideration that he informed Farmer’s consultants in June and July of 2016 that Astech needed to return to the property to complete Scope of Work #1, and that Farmer’s consultants refused to allow Astech to do so. The record as a whole shows that Jeon made a timely request for access to complete Scope of Work #1, and that Farmer denied that request.

Farmer’s argument that Jeon never asked to complete Scope of Work #1, and that she only requested “new and different testing” outside the scope of Scope of Work #1 is unpersuasive. The evidence shows that Jeon submitted multiple alternative drilling and testing proposals only in response to Farmer’s refusal to allow further drilling in the location specified in Scope of Work #1.

#### **IV. Extension of purchase option**

We reject Farmer’s contention that the trial court’s grant of a 38-day extension to complete the Astech Testing materially altered the terms of the settlement agreement by effectively extending the January 13, 2017 deadline for Jeon to exercise her purchase option. An extension of the purchase option deadline

was necessary to give Jeon the benefit of her bargain under the settlement agreement. Allowing Jeon to complete the testing necessary for her to decide whether or not to exercise the purchase option but depriving her of the right to exercise that option would frustrate the very purpose of the settlement agreement.

## **V. Alleged evidentiary error**

The trial court did not abuse its discretion by overruling Farmer's objections to arguments and evidence presented by Jeon in her reply papers below. (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 241 [abuse of discretion standard applies].)

Contrary to Farmer's assertion, Jeon's argument that Farmer refused to allow her access to the property to complete Scope of Work #1 was not a "new argument" raised for the first time in her reply brief. Jeon's motion to enforce the settlement agreement states that Farmer refused to grant Astech access to the property to complete Scope of Work #1. In that motion, Jeon sought an order requiring Farmer to grant immediate and continuous access to the property "to 'conduct ***and complete***' the testing described in the January 8, 2016 Astech Proposal [i.e., Scope of Work #1]." Declarations by Jeon, her attorney, and Schmitt submitted in support of the motion attest to Farmer's refusal to allow such access. Schmitt's supplemental declaration submitted in support of Jeon's reply reiterates his statement that Farmer and its consultants refused to allow Astech to perform and complete the testing specified in Scope of Work #1. Farmer had ample opportunity to respond to Jeon's arguments and evidence when opposing her motion.

## DISPOSITION

The order enforcing the settlement agreement is affirmed.  
Jeon is awarded her costs on appeal.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
ASHMANN-GERST